IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4186 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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HAIARKHAN LALKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR DN PATEL, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The petitioner herein, who was detained in view of the order at Annexure 'A' dated 1.6.1999 passed by the Commissioner of Police for the City of Ahmedabad, the respondent No. 1 herein, under the provisions contained in section 3 of the Gujarat Prevention of Anti-Social Activities, Act 1985 (hereinafter referred to as the Act), has preferred this petition.

2. The detenu was served with the grounds of detention dated 1.6.1999, vide Annexure 'C' to the petition, wherein it has been pointed out that the detenu is a dangerous person. From the grounds it appears that two offences were registered against the detenu, which are punishable under the Penal Code and the Bombay Police Act. From the grounds it appears that the detenu is in the habit of robbing innocent people with the assistance of others and by use of dangerous weapons. On account of the activities of the detenu, it is difficult for the

citizens in the locality to live peacefully. Grounds of detention also discloses that the detenu is a dangerous person.

3. In the present petition, this Court would not like to go into the legality of the order of detention passed by the respondent No.1. Suffice it to say that in the instant case, neither the the detaining authority nor the State has filed affidavit pointing out that the detention order is just and proper. The continued detention of the detenu is required to be held as bad and illegal on the ground that the representation is not disposed of.

4. Moreover, in amended paragraph 20 (A) of the petition it is contended specifically by the detenu as under :-

> "The petitioner states and submits that the advocate of the petitioner detenu had addressed a letter dated 15th June 1999 to the Jail Superintendent Junagadh at Junagadh along with the representation for obtaining the signature of the petitioner detenu in the said representation and then requested to forward the said representation to the Hon'ble State Home Minister, Government of Gujarat, Sachivalaya, Gandhinagar, and also requested in the said letter to send the copy of the said representation to the Chairman, Advisory Board. The petitioner states and submits that the petitioner has not received any communication either from the respondent No.1 or respondent no.2 with regard to the consideration on the said representation, and, therefore, there is unexplained delay in considering the said representation either by the respondent no.1 or respondent no.2 which is violative of Art. 22(5) of the Constitution of India, and therefore, continued detention of the detenu is bad in law and illegal which required to be quashed and set aside."

4. On behalf of the State also, no affidavit is filed interalia to point out whether the representation received from the detenu has been disposed of in accordance with law. It is the duty of the State to decide the representation of the detenu in accordance with law and principles laid down in various decisions of the Apex Court.

5. In the absence of affidavit either by the detenu or on behalf of the State, the grounds raised in the petition in paragraph No. 20.A is required to be accepted. Despite opportunities given to the State, no affidavit has been filed controverting the contentions made in the petition. The petition, is therefore, required to be allowed. The continued detention of the detenu is held as bad and illegal for the reasons aforesaid. The detenu is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

csm./ ----------